

REMARKS

Claims 43-54, 59, 60, and 76-78 are currently pending. Claims 43 and 47-48 have been amended herein for clarification. New claims 76-78, which have been added herein, are believed to be supported in claim 43. It is believed that no new matter has been entered

Examiner Interview (November 18, 2009)

Applicants are appreciative for the Examiner Interview conducted on November 18, 2009. In the Interview, the Undersigned and Examiner Dickey discussed the proposed amendments to the claims and the disclaiming affidavits provided herewith. Although no agreement on allowability was reached, the Examiner did agree that the disclaiming affidavits remove the Kuylenstierna reference as a prior art reference, thus the Examiner agreed that the present rejections are withdrawn.

Rejections under §103(a)

Claims 43-54, 59 and 60 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Kuylenstierna et al ("Tuneable Electromagnetic Bandgap Structures Based on Ba_{0.25}Sr_{0.75}TiO₃ Parallel-Plate Varactors on Silicon Coplanar Waveguides") in view of Satoh et al (US 5,576,564). This rejection is respectfully traversed.

The Kuylenstierna reference has a publication date of October 9, 2003, and as a result predates the effective filing date by 11 days; however, Kuylenstierna is also not a 102(a) reference, because it is the inventors' own work. Pursuant to MPEP 2132.01, applicant's disclosure within a year before the effective filing date cannot be used under 35 U.S.C. 102(a). *Id.* "Therefore, where the applicant is one of the co-authors of a publication cited against his or her application, the publication may be removed as a reference by the filing of affidavits made out by the other authors establishing that the relevant portions of the publication originated with, or were obtained from, applicant." *Ex parte Hirschler*, 110 USPQ 384 (Bd. App. 1952).

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Included herein are disclaiming affidavits, which prove that the Kuylenstierna reference is not by another. In the present case, Dan Kuylenstierna and Andre Vorobiev have affirmatively established through disclaiming affidavits that the relevant portions of the Kuylenstierna publication originated with, or were obtained from, the same two co-inventors Guru Subramanyam and Spartak Gevorgian. As a result, all non-disclaimed inventors on the Kuylenstierna publication are co-inventors of the present application. Thus, Kuylenstierna is inventor's own work, not a printed publication **by others**. As acknowledged by the Examiner, Kuylenstierna is not prior art against the present application, and thus the present rejection of claim 43 and all claims dependent thereon under §103(a) over Kuylenstierna in view of Satoh should be withdrawn.

Applicant respectfully submits that the present application is in condition for allowance. The Examiner is encouraged to contact the undersigned to resolve efficiently any formal matters or to discuss any aspects of the application or of this response. Otherwise, early notification of allowable subject matter is respectfully solicited.

Respectfully submitted,
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